

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,
Plaintiff,

v.

COSMINA IOANA STAN,
Defendant.

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Criminal No. 2007-21

Ishmael A. Meyers, AUSA
St. Thomas, U.S.V.I.
For the plaintiff,

ORDER

FACTS

On March 8, 2007, Stan arrived in St. Thomas aboard a cruise ship at the West Indian Company Dock (the "dock"). She presented three documents to Officer Todd Bellow: a valid Romanian passport ("Stan's passport" or the "passport"), a non-immigrant visa ("Stan's visa" or the "visa"), and a document

showing that Stan had applied for an extension of the visa.

Officer Bellow reviewed Stan's passport. Inside the passport, he found an immigrant entry stamp. The entry stamp indicated that it was issued in New York on February 2, 2003. Officer Bellow also noticed that the visa was expired.

Based on his observations, Officer Bellow referred Stan to Officer Obed Torres for secondary inspection as to her admissibility. He testified that it is highly unusual for someone requesting entry to the United States to present both an immigrant document, like the entry stamp, and a non-immigrant document, like the visa.

Officer Torres asked Stan several questions including whether she had traveled to the United States in 2003, whether she had been to New York, and whether she was aware of the entry stamp. Officer Torres also asked Stan whether she had previously worked in the United States. Stan denied any knowledge of the entry stamp, but admitted that she had worked in the United States from 2003 to 2005.

Stan was then transferred to the Cyril E. King Airport. At the airport, customs agents searched their databases and discovered that Stan had neither applied, nor been approved, for an entry stamp. They noted that the stamp did not illuminate under fluorescent light, as an authentic entry stamp would. The

agents further discovered that the alien identification number on the entry stamp was not authentic.

Officer Norman Ramirez-Seda then asked Stan about the visa and the entry stamp. Stan denied any knowledge of the entry stamp. Officer Rivera-Seda then informed Stan that she was under arrest and advised her of her Miranda rights. Stan made no further statements. Officer Rivera-Seda did not inquire about whether Stan worked in the United States

On April 9, 2007, the United States Attorney charged Stan by information with knowingly possessing a forged immigration document. Stan now moves to suppress all the statements she made to customs agents on March 8, 2007.

DISCUSSION

The Fifth Amendment guarantees the right to be free from compelled self-incrimination in the context of custodial interrogation. See U.S. Const. amend. V.; see also Revised Organic Act of 1984, 48 U.S.C. § 1561 (extending Fifth Amendment rights to the United States Virgin Islands). When a suspect is in custody, the Supreme Court has devised procedural safeguards "to dissipate the compulsion inherent in custodial interrogation and, in so doing, guard against abridgement of [a] suspect's Fifth Amendment rights." *Moran v. Burbine*, 475 U.S. 412, 415 (1986).

These safeguards include certain rights that an accused must be informed of, and must waive, before interrogation can commence:

He must be warned prior to questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise any rights must be afforded to him throughout the investigation.

Alston v. Redman, 34 F.3d 1237, 1242 (3d Cir. 1994)(citing *Miranda v. Arizona*, 384 U.S. 436, 479 (1966)).

Yet, this general rule requires balancing in immigration matters, because "[a] person seeking entry into the United States does not have a right to remain silent." See *United States v. Kiam*, 432 F.3d 524, 529 (3d Cir. 2006) (quoting *United States v. Gupta*, 183 F.3d 615, 617 (7th Cir. 1999). "While the alien is unquestionably in 'custody' until he is admitted to the country, normal *Miranda* rules simply cannot apply to this unique situation at the border." *Id.*

Accordingly, the Third Circuit has held that a customs agent may question an alien about her admissibility to the United States without giving her *Miranda* warnings, even when the customs agent begins to suspect the alien is guilty of criminal behavior. See *Kiam*, 432 F.3d at 528-30. Nevertheless, the alien must receive *Miranda* warnings, when "the [immigration] inspector's questions objectively cease to have a bearing on the grounds for

admissibility and instead only further a potential criminal prosecution." See *id.* at 530.

ANALYSIS

Stan moves to suppress all of the statements she made to customs agents on March 8, 2007, on grounds that she was not read her Miranda rights prior to making the statements.

The vast majority of the questions that customs agents asked Stan were directly related to her admissibility. These include questions about where she obtained the entry stamp, and whether she knew that the visa was expired. It is well-established that customs agents may make such inquiries to someone requesting entry into the United States without invoking the need for Miranda protections. See *Kiam*, 432 F.3d at 529.

However, Officer Torres' question, regarding Stan's work history in the United States, did not relate to her admissibility. That question regarded only Stan's potentially criminal past conduct. Accordingly, the questions regarding Stan's prior work history in the United States, fell outside the scope of inquiry into her admissibility, and instead served only to further a criminal investigation against Stan. *Cf. Kiam*, 432 F.3d at 530 (discussing permissible questions prior to *Miranda* warnings).

As a result, Stan's statement that she worked in the United

States from 2003 to 2005 will be suppressed.

CONCLUSION

It is hereby **ORDERED** that Stan's motion to suppress is
GRANTED IN PART, and **DENIED IN PART**;

It is further **ORDERED** that any statement Stan made to
customs agents on March 8, 2007 regarding her work history in the
United States shall be **SUPPRESSED**;

It is further **ORDERED** that Stan's motion to suppress her
March 8, 2007, statement shall be **DENIED** in all other respects.

August 3, 2007

Curtis V. Gómez
Chief Judge

Courtesy Copy:
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